

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ARCADIA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015040074

ORDER DENYING STUDENT'S  
MOTION TO DISMISS COMPLAINT

On March 27, 2015, the Arcadia Unified School District filed a Request for Due Process Hearing (complaint), naming Student. On April 6, 2015, Parents, on behalf of Student, filed a Motion to Dismiss the Complaint, generally alleging that District's complaint is fraudulent and a sham. On April 8, 2015, District filed an opposition.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the IDEA (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

## DISCUSSION

District's complaint seeks a determination that its November 14, 2014 individualized education program offer to Student constitutes a free appropriate public education in the least restrictive environment.

Parents claim that the November 2014 IEP was a sham and that the District's offers of placement and services were predetermined. Parents further assert that District had, essentially, prevented or ignored Parents' input. Parents make numerous detailed factual assertions regarding the assessments, the availability of the assessments, the accuracy of the IEP document's present levels of performance, the insufficiency of the IEP's goals and objectives, and the placement offer's inappropriateness. Parents claim District's complaint is "based on a fraudulent claim" and should be dismissed. District's opposition similarly asserts facts, in direct conflict with Parents' allegations.

Parents' motion includes factual allegations. District's opposition also submits evidence relevant to controverted factual issues. Therefore, the motion to dismiss is in actuality a motion for summary judgment upon the submitted evidence. Neither state nor federal special education law provides for summary judgment in due process procedures. The factual issues presented by the complaint requires an evidentiary hearing.

Also, irrespective of the evidentiary nature of the factual representations, District has the legal right to seek a determination that its offer of placement and services provided Student with a free appropriate public education in the least restrictive environment. District is an appropriate party to bring such a complaint because District is required by law to offer a FAPE to special education students regardless of whether they have been unilaterally placed in private or charter school by their parents. As long as the parties disagreed as to whether District's offer constituted a FAPE in the least restrictive environment, and Student was a special education student at the time of the IEP, District may file for due process to establish that it has met all requirements under special education law.

## ORDER

1. Student's motion to dismiss the complaint is denied.
2. All dates remain as scheduled.

DATE: April 9, 2015

/s/

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CLIFFORD H. WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings